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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,360	01/22/2004	Richard Christopher Gass	3864.00	3266

7590 09/07/2005

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EXAMINER
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REESE, DAVID C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 09/07/2005 •

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,360

Applicant(s)

GASS ET AL.

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-10 is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to Applicant's amendment filed 7/1/2005.

#### ***Status of Claims***

- [1] Claims 1-10 are pending.

#### ***Claim Objections***

- [2] Claim(s) 10 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 7/1/2005. Accordingly, the objection(s) to the claim(s) 7/1/2005 have been withdrawn.

#### ***Claim Rejections - 35 USC § 102***

- [3] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[4] Claims 1-2 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Ader, US-58,743,670, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Ader is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 1, Ader teaches of a structural fastener, comprising:

a tubular retainer (120 in Fig. 1) being adapted for one-way passage into a socket;

a fastening member (50 in Fig. 1) slidably extending through said retainer (120 in Fig. 1), said fastening member having helical threads at its top (52 in Fig. 1) and a protrusion at its bottom (20 in Fig. 1); and,

a compressed spring being positioned atop said retainer (340 in Fig. 6) for urging said protrusion (20) into engagement with the bottom of said retainer (212D in Fig. 6) and for urging said helical threads (252 in Fig. 7) from the top of said retainer (320 in Fig. 7).

Re: Claim 2, wherein said tubular retainer (324 in Fig. 2) and said fastening member (230 in Fig. 2) are keyed (322, 212, 232 in Fig. 2) such that they cannot rotate relative to one another.

### ***Response to Arguments***

[5] Applicant's arguments filed 7/1/2005 regarding rejections under 35 U.S.C. 102 have been fully considered and are to some degree persuasive. To begin, applicant states that since a combination is required in an effort to meet the applicant's claims, it would seem that assertions

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that Alder anticipates claims 1, 2 and 5 are misplaced. The examiner disagrees with applicant since the purpose of using the different figures is to show Ader's invention in an assembled, functional position rather than a blown up figure as represented by Figs. 1-3. Further, the figures 1-3 are only different embodiments of one another, with the same basic structure applicable.

Continuing, applicant argues that regardless of above, Alder does not anticipate that currently claimed by claim 1. Examiner disagrees, and directs applicant to Fig. 6-7, where the it is shown that indeed a spring (340) being positioned atop said retainer (320) for urging said protrusion (210) into engagement with the bottom said retainer (320, the movement of the protrusion 210 to the right toward engagement with the bottom of retainer as shown going from fig. 6 to 7) and for urging said helical threads (252) away from the top of said retainer (320, the movement of the threads 252, to the right away from the top of the retainer as shown going from fig. 6 to 7) [for urging is an example of intended use, as it only requires the claimed invention maintain the capacity to perform the claimed function; note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987)], and in this case the invention of Alder does possess such capacity to perform the functional language of the claimed invention.

Applicant's arguments regarding claim 5 are persuasive, and therefore the rejection under Claim 5 has been rescinded by the examiner; note that claim 5, however, remains objected to as being dependent upon a rejected claim.

[6] Applicant arguments filed 7/1/2005 regarding rejections under 35 U.S.C. 103 have been fully considered and are persuasive. The prior art does not provide sufficient motivation for

combining the Alder and Martelli references. Accordingly, the Examiner has withdrawn all previous rejections over Alder v. Martelli.

***Allowable Subject Matter***

[7] Claims 6-10 are allowed.

Claims 3-5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Reasons for Allowance***

[8] The following is a statement of reasons for the indication of allowable subject matter: As for Claim 10, the prior art, either alone or in combination with corresponding limitations as stated above, fails to teach or disclose of the exact specifications of the tubular sleeve with shoulders; pair of wedges with serrated rim and plurality of outwardly and upwardly extending teeth; fastening member with flange, helical threads, protrusion, and keyed portion for slidable positioning; polygonal cross-sections for deterring turning, and spring for urging the above elements in their respective directions as a collective functioning device. Claim 6 is allowable since it incorporates that the wedge has a serrated rim with a plurality of outwardly and upwardly extending teeth; there being no motivation to alter the wedge shape of Alder, or that of other prior art, to include such a feature. Claims 7-9 are dependent therefrom Claim 6.

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*Conclusion*

[9] **THIS ACTION IS NON-FINAL**

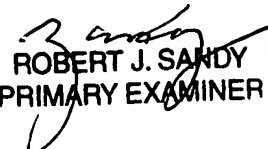
[10] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272- 7082. The examiner can normally be reached on 7:30 am - 6:00 pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. **Please also note the change in the fax phone number to (571) 273-8300 for the organization where this application or proceeding is assigned.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,  
David Reese  
Assistant Examiner  
Art Unit 3677

DCR

  
ROBERT J. SANDY  
PRIMARY EXAMINER